

**NOT FOR PUBLICATION**

FILED

JUN - 1 2009

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 08-17239-A-11  
V.O. and CO., INC. DC No. KDG-21

**Debtor.**

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING THIRD APPLICATION FOR ALLOWANCE  
OF INTERIM ATTORNEY'S FEES AND COSTS  
FOR KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL

15 A hearing was held April 29, 2009, on the Third Application  
16 for Allowance of Interim Attorney's Fees and Costs filed by  
17 Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball ("Klein  
18 DeNatale") as attorneys for the debtor. Perry Grove Park  
19 Apartments, Ltd. ("Perry Grove") opposed the application.  
20 Following the hearing, the court took the matter under  
21 submission. This memorandum contains findings of fact and  
22 conclusions of law required by Federal Rule of Bankruptcy  
23 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a  
24 core proceeding as defined in 28 U.S.C. §157(b) (2).

25 The debtor is a corporation in the business of retail  
26 furniture sales. The debtor is owned by two shareholders, Frank  
27 and Mary Ellen Van Ostrand. The debtor has operated its business  
28 in chapter 11, obtained use of cash collateral and the authority

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1 to borrow, and has proposed (and now confirmed) a plan of  
2 reorganization.

3       The debtor leases retail space from Perry Grove. The Van  
4 Ostrands guaranteed the performance of the debtor's obligations  
5 under the lease. After the bankruptcy case was filed, in  
6 February 2009, Perry Grove filed a complaint against the Van  
7 Ostrands on their personal guarantee and sought a writ of  
8 attachment.

9       Perry Grove objects to the application of Klein DeNatale on  
10 the grounds that the firm is billing the debtor's estate for time  
11 spent on the state court action Perry Grove filed against the Van  
12 Ostrands. Additionally, Perry Grove asserts that in representing  
13 the Van Ostrands in the state court action, Klein DeNatale has a  
14 conflict of interest that should prohibit it from representing  
15 the debtor and billing the debtor's estate. Finally, Perry Grove  
16 asserts that the Van Ostrands either misrepresented the date on  
17 which they were served with the state court action or, in the  
18 alternative, that Klein DeNatale erred in its billing.

19       In reply to the opposition, Scott Belden of Klein DeNatale  
20 stated at the hearing that because the lawsuit implicated the  
21 debtor's reorganization, the firm had an obligation to review the  
22 lawsuit. The Van Ostrands had separate counsel in the state  
23 court action. Further, he stated that he appeared at the hearing  
24 on the writ of attachment to address bankruptcy issues that the  
25 state court judge might have.

26       The question about when the Van Ostrands were served arises  
27 from a billing record showing that Klein DeNatale was analyzing  
28 the state court action on March 9, while Frank Van Ostrand stated

1 that he had not received proper notice of the state court action  
2 until March 12.

3       The time billed by Klein DeNatale in connection with the  
4 state court action is reasonable in the context of the firm's  
5 representation of the corporate debtor. Clearly, the state court  
6 action had the potential to affect the reorganization prospects  
7 of the debtor.

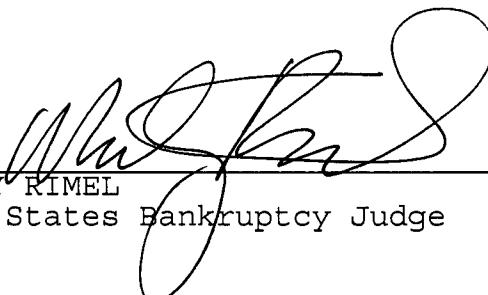
8       While ambiguous, Frank Van Ostrand's statement in opposition  
9 to the writ of attachment application that he did not receive  
10 personal service of the notice and application until March 12<sup>th</sup>,  
11 is not inconsistent with the firm reviewing the documents on  
12 March 9<sup>th</sup>, due to the specific state law requirements for  
13 effecting personal service.

14       Both parties recognize that it is a requirement of  
15 Bankruptcy Code § 327(a) that attorneys who represent a chapter  
16 11 debtor in possession not hold or represent an interest adverse  
17 to the estate and that the attorneys be disinterested. For the  
18 time periods covered in this application, the Van Ostrands had  
19 separate counsel for the state court litigation. Since the time  
20 covered by the application, the Van Ostrands have filed their own  
21 chapter 11 case, represented by Klein DeNatale. In such a  
22 situation, it is incumbent on the court to review the facts  
23 carefully to determine whether there is an adverse interest or  
24 conflict of interest that would prohibit the dual representation.  
25 However, at the time covered in this fee application, there was  
26 no dual representation. In fact, a hearing is set on the  
27 application of Klein DeNatale to represent the Van Ostrands in  
28 their chapter 11 case. Whatever the outcome of that application

1 is, the court is satisfied that Klein DeNatale has met its burden  
2 of proof that during the time period covered by this application,  
3 it did not represent an interest adverse to the chapter 11 debtor  
4 here.

5 For the foregoing reasons, the objections of Perry Grove to  
6 the application are overruled and the application is granted.  
7 Klein Denatale may submit a form of order consistent herewith.

8 DATED: June 1, 2009.

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11 WHITNEY RIMEL  
12 United States Bankruptcy Judge  
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1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA                  .)  
3    ) ss.  
4 COUNTY OF FRESNO                  )

5 I am a citizen of the United States and a resident of the  
6 county aforesaid; I am over the age of eighteen years and not a  
7 party to the within above-entitled action; my business address is  
8 2500 Tulare Street, Suite 2501, Fresno, California, 93721. On  
June 1, 2009, I served the within document on the interested  
parties in said action by placing a true copy thereof enclosed in  
a sealed envelope with postage thereon fully prepaid, in the  
United States mail at Fresno, California, addressed as follows:

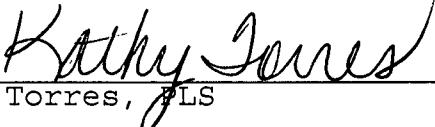
9 T. Scott Belden, Esq.  
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17 Office of the United States Trustee  
2500 Tulare Street  
18 Suite 1401  
19 Fresno, California 93721

20 I certify (or declare), under penalty of perjury, that the  
foregoing is true and correct. Executed on June 1, 2009, at  
21 Fresno, California.

22   
23    \_\_\_\_\_  
Kathy Torres, PLS